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**APR 13 2005**

**OFFICE OF PETITIONS**

In re Application of  
Bomshteyn, et al.  
Application No. 09/089,894  
Filed: June 3, 1998  
(CPA filing date of July 12,  
2002)  
Atty. Dkt. No.: 19603/871(CR

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: CORRECTED DECISION ON  
: APPLICATION FOR  
: PATENT TERM ADJUSTMENT  
:  
:  
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This is a decision on the "APPLICATION FOR PATENT TERM  
ADJUSTMENT PURSUANT TO 37 CFR § 1.705(b)" filed January 26,  
2004. This decision corrects the decision mailed March 21, 2005.

The application for patent term adjustment ("PTA") under 37  
C.F.R. § 1.705(b) is hereby **DISMISSED**.

Applicants request that the Determination of Patent Term  
Adjustment be corrected from 53 days, as indicated on the  
Determination of Patent Term Adjustment mailed December 31, 2003  
to an adjustment of 102 days.

In accordance with 37 CFR 1.702(a)(2), an adjustment of 65 days  
was accorded for failure to respond to a reply under 35 U.S.C.  
132 not later than four months after the date on which the reply  
was filed. In accordance with 37 CFR 1.703(a)(2), the delay  
began June 4, 2003, the day after the date that is four months  
after the date a reply under § 1.111 was filed, and ended August  
7, 2003, the date the non-final Office action was mailed.

The Office errantly calculated a reduction of 12 days for  
applicants' failure to engage in reasonable efforts to conclude  
prosecution when, in fact, the correct reduction under 37 CFR  
1.704(c)(8) is 38 days for the reasons set forth herein.

An Office communication was mailed October 22, 2002. A response  
was timely filed on December 27, 2002. A supplemental response  
to applicants' initial response was submitted on February 3,  
2003. In accordance with 37 CFR 1.704(c)(8), submission of a  
supplemental reply or other paper, other than a supplemental

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reply or other paper expressly requested by the examiner, after a reply has been filed constitutes a failure by applicant to engage in reasonable efforts to conclude prosecution. Hence, the adjustment of 65 days shall be reduced by 38 days, beginning December 28, 2002, the day after the date the initial reply was filed, and ending February 3, 2003, the date that the supplemental reply (i.e., supplemental IDS) was filed.

In accordance with 37 CFR 1.704(d), a paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

The supplemental IDS submitted February 3, 2003 fails to satisfy the requirements set forth at 37 CFR 1.704(d), accordingly, the adjustment of 65 days as of the date of the Notice of allowance is reduced 38 days for applicants' failure to engage in reasonable efforts to conclude prosecution.

Accordingly, the period of patent term adjustment as of the date of mailing of the Notice of Allowance is 27 days.

The Office hereby acknowledges receipt of the required application fee of \$200.00.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

*Karin Ferriter*  
*per*

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